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RHMFIUU/DEPT OF JUSTICE WASHINGTON DC PRIORITY
RHMFIUU/JIATF SOUTH PRIORITY
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SUBJECT: GUATEMALA: CONGRESS APPROVES REVISED ORGANIZED
CRIME LAW

REF: A. GUATEMALA 631 (DTG 311341Z MAR 06)
[1](#)B. GUATEMALA 668 (DTG 042024Z APR 06)

[1](#)1. (SBU) Summary: The Guatemalan Congress approved a revised organized Crime Bill on July 19. Passage of the bill was a major victory for the Embassy's efforts over the past three years to get Guatemala to adopt modern law enforcement authorities (a conspiracy statute and provisions for wiretapping, undercover operations, and controlled deliveries) that can be used against organized crime. It was originally passed on March 30 but was vetoed by President Berger due to a technical problem with the original bill. The bill may yet face constitutional challenges from political parties and NGOs objecting to certain provisions in the bill. End Summary.

[1](#)2. (SBU) The revised bill keeps unchanged the provisions to allow undercover operations and controlled deliveries when authorized by the Prosecutor General, as well as wiretapping when authorized by a judge in response to a formal request from a prosecutor. The new bill omits references to genocide and crimes against humanity that were contained in the original bill. NGOs gained this deletion using arguments that these types of crimes were covered in international agreements signed by Guatemala and therefore were not an appropriate subject for an organized crime bill. A controversial clause criminalizing groups that promote discrimination, hate, or violence was also deleted. The revised bill also adds penalties for vehicle robbery inside of Guatemala - the original bill only addressed vehicles stolen outside of Guatemala - as well penalties for obstruction of justice, intimidatory extortion, and extortion of transportation workers (i.e. bus drivers).

Definitions: Organized Crime Groups; Types of Offenses

[1](#)3. (U) Article 2 of the bill defines organized criminal groups as three or more persons who come together to commit crimes in the following categories:

- a) those contained in the Law against Drug Trafficking;
- b) those contained in the Law against the Laundering of Money and other Instruments;
- c) those contained in the Immigration Law;
- d) those contained in the Law to Prevent and Repress Terrorist Financing;
- e) those contained in the Penal Code, namely:
 - i) embezzlement, misappropriation, extortion, fraud,

collusion, and breach of trust;
----- ii) evasion, cooperation in evasion, culpable evasion;
----- iii) murder, kidnapping, aggravated assault,
aggravated robbery, swindle, trafficking in persons;
----- iv) terrorism; and,
----- v) financial intervention, bankruptcy, and
counterfeiting.
-- f) those contained in the Law against Customs Fraud; and,
-- g) those contained in the present law, namely:
----- i) conspiracy, illicit association, illegal
association of armed persons, training for illicit
activities, illegal use of uniforms and insignias,
obstruction of justice;
----- ii) commercialization of vehicles and similar items
robbed inside or outside of Guatemala; and,
----- iii) intimidatory extortion and forced obstruction of
public transit.

¶4. (U) Article 3 lists the types of offenses that are
subject to prosecution under the conspiracy statute, which
are identical to the crimes listed in Article 2 (the
preceding paragraph). The bill specifies that the penalty
for conspiracy will be identical to the penalty for the crime
involved, e.g. the sentence for conspiracy to commit murder
will be the same as the sentence for murder.

¶5. (U) Illicit Association (Article 4) - which carries a
penalty of six to eight years in prison - applies to those
who join or belong to: a) any organization that has as its
motive the commission of a crime; or, b) illegal associations
of armed persons, organized criminals, or terrorist groups.

¶6. (U) Article 5 defines Illegal Association of Armed

Persons, with a penalty of six to ten years in prison, as
applying to persons who organize, promote, or belong to any
group or association formed for the use, training, or
equipping of firearms, if the group or association lacks
government authorization.

¶7. (U) Training for Illegal Activities (Article 6) sanctions
anyone who equips, organizes, instructs, or trains persons in
military or police tactics, techniques, or procedures (TTPs)
for the development of terrorist activities, death squads,
private vigilante groups, or hired assassins. The sanction
for this offense is six to eight years in prison.

¶8. (U) Illegitimate Use of Uniforms or Insignia (Article 7),
with a penalty three to five years in prison, applies to
those who - with criminal intent - use, exhibit, display, or
employ as identification, any articles of clothing, uniforms,
or insignias that are identical or similar to those used by
the military, police, and other government security forces.

¶9. (U) Article 8 imposes a penalty of six to ten years in
prison for those found guilty of the importation, sale, or
commercialization of vehicles, boats, planes, or machinery
stolen outside or inside of Guatemala.

¶10. (U) Obstruction of Justice (Article 9) carries a
sentence of six to eight years and applies to:

-- a) anyone who uses force, threats, intimidation, or bribes
to induce false testimony in a judicial process;
-- b) anyone who threatens or corrupts any government
official connected to the judicial system, or their family
members, with the aim of influencing or obstructing a
judicial process; and,
-- c) any public official or employee participating in a
judicial process who:
----- i) protects or conceals a suspect in an investigation;
----- ii) conceals or provides incorrect information as part
of an investigation;
----- iii) falsifies or alters documents or evidence;
----- iv) acts with deliberate delay to impede an
investigation, prosecution, or sentencing; or,
----- v) presents false testimony.

¶11. (U) Article 10 defines Intimidatory Extortion as covering those who, as part of a criminal group, use intimidation to extort money or other benefits in public areas or on public transit. This crime carries a penalty of six to eight years.

¶12. (U) Extorsive Obstruction of Transit (Article 11) prescribes a penalty of six to eight years for members of a criminal group who use intimidation to extort money or other benefits from drivers of any type of public transit.

¶13. (U) The sentences for the above crimes are increased by 33 percent when the perpetrator has an administrative or supervisory role in the organized crime group, is a public official, uses minors to commit criminal acts, or compels others to participate in criminal acts.

Investigative Methods

¶14. (U) Undercover Operations: The bill authorizes undercover operations by police officers. A prosecutor investigating an organized crime group can ask the police to conduct an undercover operation with the authorization of the Prosecutor General. The prosecutor's justification must include the nature of the offense to be investigated, an explanation of why ordinary investigative means are not sufficient, a general outline of the activities of the undercover officer, and the fictitious name that will be used by the undercover officer. (The real name of the undercover officer is to be known only to the prosecutor.) The Prosecutor General can authorize an undercover operation for up to six months, renewable as necessary, but not to exceed one year.

¶15. (U) Controlled Deliveries: The legislation allows the Civilian National Police (PNC) under the close supervision of a prosecutor to conduct controlled deliveries. The prosecutor must make a formal request to the Prosecutor

General to carry out controlled deliveries, in a manner and format very similar to the request to authorize undercover operations. The prosecutor is required to present the Prosecutor General with a report on operational results no later than three days after the completion of the controlled delivery.

¶16. (U) Communications Intercepts: The bill states that interception of telephones and other forms of communications should be conducted by specialized PNC personnel and the performance of these personnel should be periodically evaluated. The prosecutor must make a formal request to the relevant investigative judge that includes information on the type of crime under investigation, the telephone numbers and/or data regarding other forms of communications that are subject to interception, a justification for using these measures, and, if available, the names and other information on the owners of the targeted means of communications. The prosecutor should report every 15 days to the judge, and the judge must ensure that the intercepts conform to the authorization order. Records containing transcriptions of the intercepts should be destroyed one year after the termination of a criminal prosecution or sentence.

Comment

¶17. (SBU) During the past three years, the Embassy has vigorously pushed for approval of this legislation, arguing that it would give the GOG the necessary tools to conduct investigations of narcotics traffickers and other organized crime groups. Without modern tools such as wiretap authority, racketeering charges, undercover operations, and controlled deliveries, the GOG has no realistic hope of

dismantling organized crime groups. We will work closely with the GOG to assist in targeting and prosecution of these groups.

¶18. (SBU) Despite changes to the bill, some political parties and NGOs remain unhappy with the bill and may challenge in court the constitutionality of some provisions, such as the conspiracy statute, wiretap authority, and undercover investigations.

Derham